

EXECUTIVE SUMMARY - ENFORCEMENT MATTER
DOCKET NO.: 2007-1982-AIR-E TCEQ ID: RN102523354 CASE NO.: 35085
RESPONDENT NAME: El Paso Independent School District

Page 1 of 2

ORDER TYPE:		
<input checked="" type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
CASE TYPE:		
<input checked="" type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION
<p>SITE WHERE VIOLATION(S) OCCURRED: Westside Maintenance Branch, 4864 Doniphan Drive, El Paso, El Paso County</p> <p>TYPE OF OPERATION: Fuel dispensing station</p> <p>SMALL BUSINESS: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>OTHER SIGNIFICANT MATTERS: There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.</p> <p>INTERESTED PARTIES: No one other than the ED and the Respondent has expressed an interest in this matter.</p> <p>COMMENTS RECEIVED: The <i>Texas Register</i> comment period expired on June 30, 2008. No comments were received.</p> <p>CONTACTS AND MAILING LIST:</p> <p style="margin-left: 20px;">TCEQ Attorney/SEP Coordinator: None</p> <p style="margin-left: 20px;">TCEQ Enforcement Coordinator: Mr. Aaron Houston, Enforcement Division, Enforcement Team 5, MC R-10, (409) 899-8784; Mr. Bryan Sinclair, Enforcement Division, MC 219, (512) 239-2171</p> <p style="margin-left: 20px;">Respondent: Mr. Oscar Anchonco, Director of Transportation, El Paso Independent School District, 6531 Boeing Drive, El Paso, Texas 79925</p> <p style="margin-left: 20px;">Mr. Kenneth D. Parker, Chief Business Officer, El Paso Independent School District, 6531 Boeing Drive, El Paso, Texas 79925</p> <p style="margin-left: 20px;">Respondent's Attorney: Not represented by counsel on this enforcement matter</p>		

VIOLATION SUMMARY CHART:		
VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation: <input type="checkbox"/> Complaint <input checked="" type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Date(s) of Complaints Relating to this Case: None</p> <p>Date of Investigation Relating to this Case: October 12, 2007</p> <p>Date of NOV/NOE Relating to this Case: November 30, 2007 (NOE)</p> <p>Background Facts: This was a routine investigation.</p> <p>AIR</p> <p>Failure to ensure a minimum of 2.7% oxygenate in gasoline. Specifically, a gasoline sample taken during the October 12, 2007 investigation indicated a 2.0% oxygenate in the gasoline being dispensed at the Plant [30 TEX. ADMIN. CODE § 114.100(a) and TEX. HEALTH & SAFETY CODE § 382.085(b)].</p>	<p>Total Assessed: \$750</p> <p>Total Deferred: \$150 <input checked="" type="checkbox"/> Expedited Settlement <input type="checkbox"/> Financial Inability to Pay</p> <p>SEP Conditional Offset: \$0</p> <p>Total Paid to General Revenue: \$600</p> <p>Site Compliance History Classification <input checked="" type="checkbox"/> High <input type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Person Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Major Source: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p>	<p>Corrective Actions Taken:</p> <p>The Executive Director recognizes that the Respondent has implemented corrective measures at the Plant by purchasing oxygenated fuel on October 19, 2007.</p>

Additional ID No(s): EE1015A



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision November 6, 2007

TCEQ

DATES

Assigned

3-Dec-2007

PCW

12-Dec-2007

Screening

11-Dec-2007

EPA Due

RESPONDENT/FACILITY INFORMATION

Respondent EI Paso Independent School District

Reg. Ent. Ref. No. RN102523354

Facility/Site Region 6-EI Paso

Major/Minor Source Minor

CASE INFORMATION

Enf./Case ID No. 35085

Docket No. 2007-1982-AIR-E

Media Program(s) Air

Multi-Media

No. of Violations 1

Order Type 1660

Enf. Coordinator Aaron Houston

EC's Team Enforcement Team 6

Admin. Penalty \$ Limit Minimum \$0 Maximum \$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)

Subtotal 1 \$1,000

ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

Compliance History

0% Enhancement

Subtotals 2, 3, & 7 \$0

Notes

No change due to average performer classification.

Culpability

No

0% Enhancement

Subtotal 4 \$0

Notes

The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply

25% Reduction

Subtotal 5 \$250

Before NOV NOV to EDP RP/Settlement Offer

Extraordinary

Ordinary

N/A

X (mark with x)

Notes

The Respondent completed corrective actions on October 19, 2007.

Total EB Amounts \$1
Approx. Cost of Compliance \$600

0% Enhancement*

*Capped at the Total EB \$ Amount

Subtotal 6 \$0

SUM OF SUBTOTALS 1-7

Final Subtotal \$750

OTHER FACTORS AS JUSTICE MAY REQUIRE

0%

Adjustment \$0

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes

Final Penalty Amount \$750

STATUTORY LIMIT ADJUSTMENT

Final Assessed Penalty \$750

DEFERRAL

20%

Reduction

Adjustment -\$150

Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes

Deferral offered for expedited settlement.

PAYABLE PENALTY

\$600

Screening Date 11-Dec-2007

Docket No. 2007-1982-AIR-E

PCW

Respondent El Paso Independent School District

Policy Revision 2 (September 2002)

Case ID No. 35085

PCW Revision November 6, 2007

Reg. Ent. Reference No. RN102523354

Media [Statute] Air

Enf. Coordinator Aaron Houston

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
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NOVs	Written NOVs with same or similar violations as those in the current enforcement action (number of NOVs meeting criteria)	0	0%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (number of judgements or consent decrees meeting criteria)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (number of counts)	0	0%
Emissions	Chronic excessive emissions events (number of events)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which notices were submitted)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which violations were disclosed)	0	0%

Please Enter Yes or No

Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 0%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance
History
Notes

No change due to average performer classification.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 0%

Screening Date 11-Dec-2007		Docket No. 2007-1982-AIR-E		PCW
Respondent El Paso Independent School District		<i>Policy Revision 2 (September 2002)</i>		
Case ID No. 35085		<i>PCW Revision November 6, 2007</i>		
Reg. Ent. Reference No. RN102523354				
Media [Statute] Air				
Enf. Coordinator Aaron Houston				
Violation Number		<input type="text" value="1"/>		
Rule Cite(s)		<input type="text" value="30 Tex. Admin. Code § 114.100(a) and Tex. Health & Safety Code § 382.085(b)"/>		
Violation Description		<input type="text" value="Failed to ensure a minimum of 2.7% oxygenate in gasoline dispensed from the Plant. Specifically, a gasoline sample taken during the October 12, 2007 investigation indicated a 2.0% oxygenate in the gasoline being dispensed at the Plant."/>		
Base Penalty				<input type="text" value="\$10,000"/>

>> Environmental, Property and Human Health Matrix

OR	Harm					
	Release	Major	Moderate	Minor		
	Actual	<input type="text"/>	<input type="text"/>	<input type="text" value="x"/>		
	Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>	Percent	<input type="text" value="10%"/>

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor		
	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	Percent	<input type="text" value="0%"/>

Matrix Notes

Human health or the environment has been exposed to insignificant amounts of pollutants which do not exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment

Violation Events

Number of Violation Events <input type="text" value="1"/>	<input type="text" value="7"/>	Number of violation days
---	--------------------------------	--------------------------

<p><small>mark only one with an x</small></p> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr><td style="text-align: center;">daily</td><td><input type="text"/></td></tr> <tr><td style="text-align: center;">monthly</td><td><input type="text"/></td></tr> <tr><td style="text-align: center;">quarterly</td><td><input type="text"/></td></tr> <tr><td style="text-align: center;">semiannual</td><td><input type="text"/></td></tr> <tr><td style="text-align: center;">annual</td><td><input type="text"/></td></tr> <tr><td style="text-align: center;">single event</td><td><input type="text" value="x"/></td></tr> </table>	daily	<input type="text"/>	monthly	<input type="text"/>	quarterly	<input type="text"/>	semiannual	<input type="text"/>	annual	<input type="text"/>	single event	<input type="text" value="x"/>	<p style="text-align: right;">Violation Base Penalty <input type="text" value="\$1,000"/></p> <div style="border: 1px solid black; padding: 10px; text-align: center;"> <p>One single event is recommended.</p> </div>
daily	<input type="text"/>												
monthly	<input type="text"/>												
quarterly	<input type="text"/>												
semiannual	<input type="text"/>												
annual	<input type="text"/>												
single event	<input type="text" value="x"/>												

Economic Benefit (EB) for this violation	Statutory Limit Test
Estimated EB Amount <input type="text" value="\$1"/>	Violation Final Penalty Total <input type="text" value="\$750"/>
This violation Final Assessed Penalty (adjusted for limits) <input type="text" value="\$750"/>	

Economic Benefit Worksheet**Respondent** El Paso Independent School District**Case ID No.** 35085**Reg. Ent. Reference No.** RN102523354**Media** Air**Violation No.** 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

Delayed Costs

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling	\$600	12-Oct-2007	19-Oct-2007	0.0	\$1	n/a	\$1
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost implementing procedures to ensure the oxygenated fuel content is maintained. Date required is the date of the investigation. Final date is the date corrective actions were completed.

Avoided Costs**ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)**

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs**Approx. Cost of Compliance**

\$600

TOTAL

\$1

Compliance History

Customer/Respondent/Owner-Operator:	CN600890412	El Paso Independent School District	Classification: AVERAGE	Rating: 1.86
Regulated Entity:	RN102523354	WESTSIDE MAINTENANCE BRANCH	Classification: HIGH	Site Rating: 0.00
ID Number(s):	AIR NEW SOURCE PERMITS PETROLEUM STORAGE TANK REGISTRATION	ACCOUNT NUMBER REGISTRATION	EE1015A 57499	
Location:	4864 DONIPHAN DR, EL PASO, TX, 79922		Rating Date: 9/1/2007 Repeat Violator: NO	
TCEQ Region:	REGION 06 - EL PASO			
Date Compliance History Prepared:	December 03, 2007			
Agency Decision Requiring Compliance History:	Enforcement			
Compliance Period:	December 03, 2002 to December 03, 2007			

TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History

Name: Aaron T. Houston Phone: 409-899-8784

Site Compliance History Components

- | | |
|--|------------|
| 1. Has the site been in existence and/or operation for the full five year compliance period? | Yes |
| 2. Has there been a (known) change in ownership of the site during the compliance period? | No |
| 3. If Yes, who is the current owner? | <u>N/A</u> |
| 4. If Yes, who was/were the prior owner(s)? | <u>N/A</u> |
| 5. When did the change(s) in ownership occur? | <u>N/A</u> |

Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.
N/A
- B. Any criminal convictions of the state of Texas and the federal government.
N/A
- C. Chronic excessive emissions events.
N/A
- D. The approval dates of investigations. (CCEDS Inv. Track. No.)
- | | | |
|---|------------|----------|
| 1 | 07/14/2003 | (141235) |
| 2 | 10/29/2003 | (253484) |
| 3 | 07/15/2004 | (282552) |
| 4 | 12/21/2004 | (344807) |
| 5 | 01/30/2006 | (438850) |
| 6 | 07/19/2006 | (482520) |
| 7 | 07/31/2007 | (564873) |
| 8 | 11/29/2007 | (600968) |
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
- F. Environmental audits.
N/A
- G. Type of environmental management systems (EMSs).
N/A
- H. Voluntary on-site compliance assessment dates.
N/A
- I. Participation in a voluntary pollution reduction program.
N/A
- J. Early compliance.
N/A
- Sites Outside of Texas

N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
EL PASO INDEPENDENT SCHOOL
DISTRICT
RN102523354**

§ **BEFORE THE**
§
§ **TEXAS COMMISSION ON**
§
§
§ **ENVIRONMENTAL QUALITY**

AGREED ORDER DOCKET NO. 2007-1982-AIR-E

I. JURISDICTION AND STIPULATIONS

At its _____ agenda, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding El Paso Independent School District ("the Respondent") under the authority of TEX. HEALTH & SAFETY CODE ch. 382 and TEX. WATER CODE ch. 7. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent appear before the Commission and together stipulate that:

1. The Respondent owns and operates a fuel dispensing station at 4864 Doniphan Drive in El Paso, El Paso County, Texas (the "Plant").
2. The Plant consists of one or more sources as defined in the TEX. HEALTH & SAFETY CODE § 382.003(12).
3. The Commission and the Respondent agree that the Commission has jurisdiction to enter this Agreed Order, and that the Respondent is subject to the Commission's jurisdiction.
4. The Respondent received notice of the violations alleged in Section II ("Allegations") on or about December 5, 2007.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by the Respondent of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
6. An administrative penalty in the amount of Seven Hundred Fifty Dollars (\$750) is assessed by the Commission in settlement of the violation alleged in Section II ("Allegations"). The Respondent has paid Six Hundred Dollars (\$600) of the administrative penalty and One Hundred Fifty Dollars (\$150) is deferred contingent upon the Respondent's timely and satisfactory compliance with all the terms of this Agreed Order. The deferred amount will be waived upon full compliance with the terms of this Agreed Order. If the Respondent fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require the Respondent to pay all or part of the deferred penalty.

7. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.
8. The Executive Director of the TCEQ and the Respondent have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
9. The Executive Director recognizes that the Respondent has implemented corrective measures at the Plant by purchasing oxygenated fuel on October 19, 2007.
10. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
11. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
12. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

II. ALLEGATIONS

As owner and operator of the Plant, the Respondent is alleged to have failed to ensure a minimum of 2.7% oxygenate in gasoline, in violation of 30 TEX. ADMIN. CODE § 114.100(a) and TEX. HEALTH & SAFETY CODE § 382.085(b), as documented during an investigation conducted on October 12, 2007. Specifically, a gasoline sample taken during the October 12, 2007 investigation indicated a 2.0% oxygenate in the gasoline being dispensed at the Plant.

III. DENIALS

The Respondent generally denies each allegation in Section II ("Allegations").

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that the Respondent pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and the Respondent's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from requiring corrective action or penalties for violations, which are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: El Paso Independent School District, Docket No. 2007-1982-AIR-E " to:

Financial Administration Division, Revenues Section

Attention: Cashier's Office, MC 214

Texas Commission on Environmental Quality

P.O. Box 13088

Austin, Texas 78711-3088

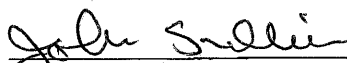
2. The provisions of this Agreed Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the plant operations referenced in this Agreed Order.
3. This Agreed Order, issued by the Commission, shall not be admissible against the Respondent in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
4. This agreement may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreement may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes.
5. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to the Respondent, or three days after the date on which the Commission mails notice of the Order to the Respondent, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

El Paso Independent School District
DOCKET NO. 2007-1982-AIR-E
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SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission



For the Executive Director

6/18/08
Date

I, the undersigned, have read and understand the attached Agreed Order. I am authorized to agree to the attached Agreed Order on behalf of the entity indicated below my signature, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I also understand that failure to comply with the Ordering Provisions, if any, in this order and/or failure to timely pay the penalty amount, may result in:

- A negative impact on compliance history;
- Greater scrutiny of any permit applications submitted;
- Referral of this case to the Attorney General's Office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions;
- Automatic referral to the Attorney General's Office of any future enforcement actions; and
- TCEQ seeking other relief as authorized by law.

In addition, any falsification of any compliance documents may result in criminal prosecution.



Signature

February 22, 2008
Date

Kenneth D. Parker
Name (Printed or typed)
Authorized Representative of
El Paso Independent School District

Chief Business Officer
Title

Instructions: Send the original, signed Agreed Order with penalty payment to the Financial Administration Division, Revenues Section at the address in Section IV, Paragraph 1 of this Agreed Order

